

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Bluegrass Generation Company, L.L.C.)	Docket No. ER02-506-002
Cabrillo Power I, L.L.C.)	Docket No. ER99-1115-005
Cabrillo Power II, L.L.C.)	Docket No. ER99-1116-005
Calcasieu Power, L.L.C.)	Docket No. ER00-1049-003
Dynegy Danskammer, L.L.C.)	Docket No. ER01-140-002
Dynegy Midwest Generation, Inc.)	Docket No. ER00-1895-002
Dynegy Power Marketing, Inc.)	Docket No. ER99-4160-003
Dynegy Power Services, Inc.)	Docket No. ER94-1612-026
Dynegy Roseton, L.L.C.)	Docket No. ER01-141-002
El Segundo Power, L.L.C.)	Docket No. ER98-1127-005
Foothills Generating, L.L.C.)	Docket No. ER02-554-001
Heard County Power, L.L.C.)	Docket No. ER01-943-002
Illinova Energy Partners, Inc.)	Docket No. ER94-1475-021
Long Beach Generation L.L.C.)	Docket No. ER98-1796-004
Nicor Energy, L.L.C.)	Docket No. ER01-1169-002
Renaissance Power, L.L.C.)	Docket No. ER01-3109-002
Riverside Generating Company, L.L.C.)	Docket No. ER01-1044-002
Rockingham Power, L.L.C.)	Docket No. ER99-1567-002
Rocky Road Power, L.L.C.)	Docket No. ER99-2157-002
Rolling Hills Generating, L.L.C.)	Docket No. ER02-553-001

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission (hereinafter "ICC") hereby submits its comments in the above-captioned proceedings in response to a filing submitted by Dynegy Inc. on behalf of its generating and marketing affiliates (hereinafter "Dynegy").

I. BACKGROUND

On February 8, 2002, Dynegy tendered for filing with the Federal Energy Regulatory Commission (hereinafter “Commission”) an updated market power report pursuant to the Commission’s orders initially granting authorization to sell power at market-based rates. Dynegy states that the filing was triggered by the Commission’s *Cabrillo Power I, LLC, et al.* order where the Commission granted market-based rate authority to facilities owned by Dynegy Power Corp. and NRG Energy Inc.¹ For ease of administration, Dynegy requests that the Commission accept a combined updated market power study for all Dynegy entities in all relevant markets.² As a result, the updated market power analyses submitted by Dynegy is intended to cover all Dynegy owned or controlled generation in the United States.³

On February 25, 2002, Dynegy made a second filing to revise the February 8 filing. The revisions apply to the affidavit of Dr. William H. Heironymus and to the exhibits for the market power analysis in the Illinois Power Company (“IP”) control area market. The Commission officially noticed Dynegy’s initial filing on February 14, 2002 wherein the deadline for comments was set at March 1, 2002. The Commission noticed Dynegy’s revised filing on February 27, 2002 wherein the deadline for comments was moved to March 15, 2002. In accordance with the procedural schedule in this case, the ICC provides the following Comments on both Dynegy’s initial and revised filings.

As a preliminary matter, the ICC notes that, as the entity charged with regulating public utilities in the State of Illinois, the ICC has a keen interest in the effect Dynegy’s filing will have on developing energy markets both at the wholesale level and at the ICC-jurisdictional level.⁴ As part of its regulatory duties, the ICC is required to ascertain that Illinois public utility rates,

¹ Transmittal Letter at 2.

² Transmittal Letter at 2.

³ Transmittal Letter at 2

⁴ 220 ILCS §5/1-101, *et seq.* (2000 & Supp. 2001).

charges, and rules and regulations relating to rates and charges for retail service within Illinois are just, reasonable and non-discriminatory.⁵ The Illinois General Assembly has found that competition in the Illinois electric services market may create opportunities for new products and services at lower costs for users of electricity. While recognizing that developing competition must be accommodated, the General Assembly requires that competitive wholesale and retail markets must benefit all Illinois citizens.⁶ Accordingly, the Illinois General Assembly has also directed the ICC to “act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.”⁷

In order for the ICC to achieve its regulatory objectives, it is imperative that genuine competition exist in the wholesale market. The Illinois General Assembly recognized the relationship between the retail and wholesale markets and required the ICC to advocate the development of competition in the wholesale, as well as the retail, market. This statutory directive is based on the Illinois General Assembly’s finding that “a competitive wholesale and retail market must benefit all Illinois citizens.”⁸

The restructuring that is occurring in the electric marketplace has placed an increased reliance on competitive wholesale markets to discipline prices. As a result, the effectiveness of the Commission’s efforts to measure the ability of sellers to exercise market power in wholesale markets, and mitigate it when it is present, has become increasingly critical to ensuring just and reasonable rates for power and energy. Applicants that receive wholesale market-based rate authority from the Commission and yet are still able to exercise market power, make it difficult or impossible for states such as Illinois to develop sustainable competitive retail markets.

⁵ *Id.*, at §§5/9-101 - 5/9-252.

⁶ 220 ILCS §§5/16-101A(b),(c).

⁷ *Id.*, at §5/16-101A(d).

⁸ *Id.*

II. ICC RECOMMENDATION

The ICC recommends that the Commission: (1) not renew Dynegy's authorization to sell wholesale power at market based rates for sales within and into the IP control area market; (2) require Dynegy to modify its Supply Margin Assessment ("SMA") analysis to reflect a reliability reserve margin; and (3) initiate a formal investigative proceeding so that the accuracy of data used in Dynegy's SMA analysis can be confirmed.

The ICC's review of Dynegy's updated market power report focused only on facilities owned or controlled by Dynegy in the Midwest and, in particular, the circumstances within the control area of Dynegy's affiliate IP.⁹ The ICC's review of Dynegy's February 8 and February 27 filings in this docket raised concerns regarding the methodologies used by Dynegy in conducting the Commission's SMA test by which Dynegy concludes that it does not have market power in the IP control area. In particular, Dynegy's use of the posted total transmission capability numbers to represent transmission system capability to import power into the IP control area does not reflect physical reality. Using a measure of Simultaneous Import Capability ("SIC") in the SMA analysis would represent the physical capability of the transmission system to import power into the IP control area more accurately than a simple summation of the posted total transmission capability of each of IP's transmission interconnections.

Based on its analysis as stated above, the ICC recommends that a measure of simultaneous import capability be used in this case as the appropriate measure of the amount of power able to be imported into the IP control area. The ICC's calculations indicate that when

⁹ Dynegy Midwest Generation, Inc. currently owns the power plants formerly owned by IP, an ICC jurisdictional utility.

simultaneous import capability is used as the appropriate measure of the system's capability to import power into the IP control area, Dynegy most likely fails the Commission's SMA test.¹⁰ Accordingly, on this basis, the ICC recommends that Dynegy's market-based rate authority with regard to wholesale power sales within or into the IP control area not be renewed as requested by Dynegy in this case.

Regardless of whether or not the Commission adopts the ICC's recommendation herein to use a measure of simultaneous import capability in the SMA analysis, the ICC has two remaining issues with the market power analysis performed by Dynegy in this case. First, the figures used by Dynegy to represent total load requirements, both inside and outside of the IP control area, should be adjusted to account for reliability reserve margin requirements. Dynegy's failure to take into account reliability reserve margin requirements results in an overstatement of the amount of uncommitted capacity purported to be available for import into the IP control area as well as an understatement of the amount of load that may need to be served inside the IP control area. Adjusting the SMA analysis for needed reliability reserve margins will more accurately reflect the ability of Dynegy to exercise market power in the IP control area. This issue is explained below in Section III.B.

Second, the ICC has been unable to completely evaluate the market analysis submitted by Dynegy in this case because the ICC does not have access to all of the data sources used by Dynegy's consultant in this case. Regardless of the Commission's decision with respect to the import capability and reserve margin issues discussed above, the ICC requests that a formal investigative proceeding be initiated in this docket so that the accuracy of the data used in Dynegy's analysis can be confirmed. This issue is explained below in Section III.C.

¹⁰ The ICC acknowledges that its conclusion that Dynegy fails the SMA test is contingent upon the use of the Illinois Power SIC provided for in the Butts' testimony (as discussed *infra*) as a measure of TTC into the Illinois Power control area.

III. DISCUSSION OF ISSUES

In *AEP Power Marketing*, the Commission outlined the Supply Margin Assessment, a new market power screen for applicants requesting market-based rate authority.¹¹ In brief, the SMA test determines if the applicant's owned or controlled generation is necessary to meet peak load in a control area.¹² If the applicant's owned or controlled generation is needed to supply load, then the applicant is determined to possess the ability to exercise market power.

The Commission explained how to apply the SMA test as follows:

In applying the SMA, we will first consider the control area market where the applicant is located. Next we will consider the markets outside the applicant's control area market. An applicant will pass the screen if it or its affiliates own or control through contract an amount of generation located in a control area which is less than the supply margin (generation in excess of load) in the control area. The margin will include the amount of generation that can be imported into the control area limited by the total transfer capability (TTC) of the transmission system (i.e., the lesser of uncommitted capacity or TTC). Sellers and their affiliates would continue to be allowed to sell into any control area where they pass the screen.¹³

Dr. William H. Heironymus performed the market power study submitted in this case by Dynegy. Dr. Heironymus states that the analysis is based on the Commission's SMA generation market power test.¹⁴ Dr. Heironymus further states that the study evaluates generation dominance and related competition issues for each of the markets in which Dynegy owns or controls generation.¹⁵ Dr. Heironymus' analysis concludes that Dynegy passes the SMA test in all markets in which it owns or controls generation and that, on this basis, all of Dynegy's

¹¹ *AEP Power Marketing, et al.* 97 FERC ¶61,219 (November 20, 2001).

¹² The Commission exempted all sales going into an ISO/RTO with Commission approved market monitoring and mitigation measures from having to perform the SMA test. Illinois Power is not a member of an ISO/RTO that satisfies this standard (indeed, currently, Illinois Power is not a member of any RTO).

¹³ *AEP Power Marketing*, at 8.

¹⁴ Exhibit B (affidavit of William H. Heironymus), at 2.

¹⁵ *Id.*

subsidiaries should retain market-based rate authority for all markets in which they operate.¹⁶ The ICC's preliminary analysis with respect to the IP control area market, however, concludes otherwise.

Exhibit WHH-3 (Revised) represents Dynegy's SMA analysis for the IP market. This exhibit shows: (1) all generating capacity within the IP control area, including generation owned or controlled by Dynegy, as well as that owned or controlled by others; (2) the TTC (total transmission capability) available from each of the control areas directly interconnected with IP; (3) the uncommitted capacity available from each of the control areas directly interconnected with IP; and (4) the total load requirements inside the IP control area. These are the data points used by Dynegy to perform the SMA analysis for the IP control area market.

On February 25, 2002, Dynegy made a revised filing to correct two errors contained in Exhibit WHH-3 of the initial Dynegy filing. The first correction was the elimination of Crete Energy Park's 390 MW from the list of generators located within the IP control area. The second correction was the increase of Total Load Requirements in Market to account for the entire load within the IP control area, rather than just IP's load. The ICC agrees that Dynegy's initial filing was in error concerning these two points and that Dynegy's revisions to the SMA analysis are appropriate.

A. Simultaneous Import Capability ("SIC") is the proper measure of transmission system import capability to use in the SMA analysis because it more accurately represents the physical reality of the system.

The ICC takes strong exception to Dynegy's proposed IP control area transmission import capacity of 8,460 MW. See Dynegy Exhibit WHH-3 (Revised). Dynegy arrives at this number by summing the posted total transmission capabilities of each of the individual

¹⁶ *Id.*

interconnections between IP's control area and contiguous control areas. This simplistic method of calculating transmission import capability, however, fails to take into account the physical reality of the transmission system and results in an overly optimistic estimation of the ability of generators outside the IP control area to compete with Dynegy controlled generation to serve load inside the IP control area.

As an alternative to Dynegy's simplistic transmission import calculation methodology, the ICC proposes that a simultaneous import capability method be used to measure import capability into the IP control area.¹⁷ The SIC methodology would evaluate the actual physical capability of the transmission system to import power into the IP control area at the time of the IP control area peak demand. Unlike the methodology employed by Dynegy, the SIC methodology would properly reflect the transmission constraints leading into IP's control area and, thus, provide a more accurate assessment of the amount of power non-Dynegy generators are able to transport into the IP control area for a particular time period (such as system peak).

More importantly, the use of an SIC measure to represent IP's transmission import capability is consistent with the Commission's stated intent in adopting the SMA screen. The Commission invited commentors to present arguments on a "case-by-case" basis that another factor limiting import capability is appropriate, if warranted by the facts.¹⁸ Given the physical characteristics of an integrated network grid, the transmission constraints leading into the IP control area, and the need to evaluate the real impacts of these constraints at times of peak load, the use of simultaneous import capability in the SMA screen for the IP market is warranted.

¹⁷ The SIC methodology is commonly used in transmission system analyses, both economic and reliability. See e.g., *ECAR and Main Joint Study 1998 Summer Simultaneous Import Capability into Illinois and Michigan*. In this study, first contingency simultaneous import capability measures are calculated to show import capability into Illinois and Michigan. See also, Docket No. EC00-26, Exhibit APP-400, page 27 at 21. In this merger filing between Commonwealth Edison and PECO, Commonwealth Edison's SIC is used to establish that the combination of the ComEd and PECO transmission system under common ownership would not give either party the ability to exercise market power or restrain competition.

¹⁸ See Footnote 12, *AEP Power Marketing*, at 7.

On April 19, 2001, Mr. David Butts, then Executive Vice President and CEO of IP, submitted testimony before the ICC's Electric Policy Committee concerning electric reliability for the summer of 2001. [See *ICC Attachment I*]. In that presentation, Mr. Butts stated that IP's summer SIC for 2001 was 1,959 MW.¹⁹ The ICC is not aware of any transmission expansion or other significant change that has taken place since IP's presentation that would lead to a significant difference in IP's simultaneous import capability above 1,959 MW.²⁰ Unless Dynegy wishes to update IP's SIC calculation for 2002, the ICC proposes that 1,959 MW be used in the SMA analysis to represent the capability of the system to be used to import power into the IP control area at the time of the 2002 peak.

The use of Dynegy's proposed method in place of determining import capacity in place of the SIC would result in overstating the total potential non-Dynegy generation available to supply load within the IP control area. If any method other than SIC is allowed to be used in the SMA analysis, erroneous conclusions can result. If erroneous conclusions are allowed to serve as the basis for granting market-based rate authority to Dynegy, the door will be opened for the exercise of market power by Dynegy within the IP control area.

The ICC modified Dynegy's Exhibit WHH-3 (Revised) to reflect a total transmission import capability into the IP control area of 1,959 MW (IP's stated 2001 SIC), instead of 8,460 MW used by Dynegy (the sum of the posted TTCs of each IP interconnection). This total transmission import capability of 1,959 MW was then added to the total non-Dynegy generation within the IP control area of 839 MW as shown on Dynegy's Exhibit WHH-3 (Revised). This results in a total non-Dynegy generation supply within the IP control area of 2,798 MW. This

¹⁹ *Summer 2001 Electric Reliability and Initiatives and Recommendations to Promote Future Reliability*. Presentation to the Illinois Commerce Commission, April 19, 2001, at 7 (ICC Attachment I).

²⁰ The ICC also acknowledges that the specific method used, and assumptions made, by Mr. Butts to derive the simultaneous import capability figure of 1,959 MW were not provided.

number dramatically contrasts with the 8,180 MW that Dynegy's Exhibit WHH-3 (Revised) shows to be available from non-Dynegy sources to serve load within the IP control area.²¹

Dynegy's Exhibit WHH-3 (Revised) shows that all of the load within the IP control area (4,233 MW) can be easily supplied using non-Dynegy generation, with 3,947 MW of non-Dynegy generation to spare. If the transmission import capability is adjusted as proposed by the ICC (from 8,460 MW to 1,959 MW), however, the conclusion is that the load within the IP control area (4,233 MW) cannot all be served by non-Dynegy generation (2,798 MW). Indeed, 1,435 MW of Dynegy generation will be needed to serve this load.

Consequently, if an accurate representation of the actual physical capability of the transmission system to import power into the IP control area is used in the analysis, the conclusion is that there will be no way to avoid the use of Dynegy controlled generation within the IP control area during the peak period. Accordingly, Dynegy fails the SMA test for sales within and into the IP control area.²²

FERC's SMA Order correctly concludes that, for any time period in which a company's generators must be used to supply load (i.e., the SMA test is not passed), that company possesses the ability to exercise market power. *AEP Power Marketing* at 7. Because Dynegy fails the SMA test for wholesale sales into and within the IP control area market, and thus, can exercise market power with respect to these sales, the Commission should not renew Dynegy's market-based rate authorization for these sales.²³

²¹ For three interfaces, Dynegy found the limiting factor for imports to be uncommitted capacity, rather than TTC. Therefore, Dynegy's Exhibit WHH-3 (Revised) shows total available non-Dynegy generation to be 8,180 MW, rather than the 8,460 MW of TTC.

²² The ICC once again acknowledges that its conclusion that Dynegy fails the SMA test is contingent upon the use of the Illinois Power SIC provided for in the Butts' testimony as a measure of TTC into the Illinois Power control area.

²³ *Id.*

B. The figures used by Dynegy to represent total load requirements both inside and outside the IP control area should be adjusted to account for reliability reserve margin requirements.

Historically, regulators have required electric public utilities to maintain capacity reserve margins to help ensure reliability during peak periods. Traditionally, the expected margin has typically been around fifteen to twenty percent.²⁴ Exhibit WHH-3 (Revised) shows the total forecasted load requirement in the IP control area to be 4,233 MW. This number was not adjusted to reflect the need to maintain a reliability reserve margin to serve load. Consequently, it understates the actual amount of load that may need to be served in the IP control area. Furthermore, Exhibit WHH-4 (Revised) calculates the level of uncommitted capacity available from control areas adjacent to the IP control area by subtracting the forecasted control area peak load from the total amount of generating capacity available in each adjacent control area. Dynegy's uncommitted capacity figures do not account for the necessary reliability reserve margins in the adjacent control areas. Consequently, the quantity of uncommitted capacity that Dynegy shows to be available from control areas adjacent to IP is overstated.

Regardless of the action taken by the Commission on the ICC's simultaneous import capability argument above, the Commission should direct Dynegy to adjust the figures in Exhibit WHH-3 (Revised) to reflect a realistic reliability reserve margin. This adjustment would result in increasing the figure representing load within the IP control area and decreasing the figure representing uncommitted capacity in the contiguous control areas. This adjustment, by itself,

²⁴ For example, the Mid-America Interconnected Network ("MAIN") "Coordinated Bulk Power Supply & Demand Summary" for April, 1997 states, "The MAIN Executive Committee has adopted the following statement 'Current analysis suggests maintaining a minimum reserve for MAIN members of 18 to 22% (equivalent to a capacity margin of 15 to 18%).' Appendix A at page A-1. See also, "MAIN Load and Resource Audit Summer, 2001 Report to the Board of Directors" which states, "The MAIN Board has approved a minimum long term (several years) planning reserve margin of 17 to 20% for MAIN as a whole. A near-term (a few months) criterion has never been formally approved, but our experience has shown that a planning reserve margin of about 15% has been adequate for resources in service at the beginning of the summer load period." Report at 2.

may not change the conclusion reached by Dynegy on Exhibit WHH-3 (Revised).²⁵ Nevertheless, a proper SMA analysis should take into account reasonable reliability reserve requirements.

C. The Commission should initiate a formal investigative proceeding in this case so that the accuracy of the data used in Dynegy's SMA analysis can be confirmed.

The ICC has been unable to confirm some of the data used by Dynegy in its SMA analysis because of lack of access to the underlying data sources. For example, Dynegy's witness states that figures regarding generating capacity are derived from information from the most recent EIA-411 filings (April 2001) supplemented, mostly for merchant generation, by information from Platt's NewGen and a variety of public data sources.²⁶ Dynegy's witness also states that for merchant generation capability, he relied on "internal company documents containing project descriptions."²⁷

The ICC does not currently have access to these data sources. Consequently, it was not possible for the ICC to verify all of the numbers used by Dynegy in its SMA analysis. The ICC, however, does have access to the FERC Form No. 714 for Ameren, American Electric Power, Central Illinois Light Company, Commonwealth Edison, and MidAmerican Energy Company.²⁸ When the figures contained in FERC Form No. 714 for generating capacity are compared to the figures provided by Dynegy in Exhibit WHH-4 (Revised), there is a difference of almost 14,000

²⁵ This statement cannot be made conclusively because it was not possible for the ICC to confirm all of the peak load figures used by Dynegy in Exhibit WHH-4. For example, footnote 1 on Exhibit WHH-4 states that the peak load figures were obtained from "2000 FERC Form 714 filings." However, the ICC was unable to locate FERC Form 714 for Tennessee Valley Authority, Southern Illinois Power Coop., or City Water Light and Power. Indeed, FERC Form 714s for these entities may not exist. Nevertheless, accurate peak load data for these entities is a prerequisite to calculating uncommitted capacity for purposes of the SMA analysis.

²⁶ Footnote 44, Exhibit B (affidavit of William H. Heironymus), at 15 and Exhibit WHH-4

²⁷ Footnote 44, Exhibit B (affidavit of William H. Heironymus), at 15

²⁸ See FERC Form No. 714. Part II, Schedule 2 - Control Area Monthly Capabilities at Time of Monthly Peak Demand. (2000).

MW. While there may be perfectly legitimate explanations for this data discrepancy, the ICC believes a variance of 14,000 MW merits further investigation.

The accuracy of these generating capacity figures is important, among other reasons, because the data is used to calculate the amount of available uncommitted capacity. For example, after an initial review of alternative data, it appears to the ICC that the figure on Exhibit WHH-3 (Revised) for uncommitted capacity into the IP control area from Central Illinois Light Company may be dramatically overstated. Such data anomalies warrant the establishment of formal investigation procedures so that the accuracy of the data to be used in the SMA test can be confirmed.

III. CONCLUSION

A proper SMA analysis should use a measure of simultaneous import capability to measure the ability of the transmission system to import power into a control area. No other methodology accurately reflects physical reality on an interconnected network transmission system. When a proper measure of simultaneous import capability is used in the SMA analysis for the IP control area market, Dynegy most likely fails the test. Accordingly, the Commission should not renew Dynegy's market-based rate authority for wholesale power sales within and into the IP control area market.

In addition, the SMA analysis submitted by Dynegy in this case fails to take into account the necessary reliability reserve margin. The Commission should direct Dynegy to modify its SMA analysis on Exhibits WHH-3 (Revised) and WHH-4 (Revised) to reflect an appropriate reliability reserve margin. If reliability reserve margin is taken into account, it becomes even less likely that Dynegy can pass the SMA test for sales into the IP control area market.

Finally, the Commission should initiate a formal investigative proceeding through which the accuracy of data used by Dynegy in the SMA test for the IP control area market (Exhibits WHH-3 (Revised) and WHH-4 (Revised)) can be confirmed. The ICC currently does not have access to some of the data sources used by Dynegy's consultant and the alternative data that the ICC does have access to cannot be reconciled with the data utilized by Dynegy.

Dated: March 14, 2002

Respectfully submitted,

/s/ Thomas G. Aridas

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